

Ekeh v. Chertoff, No. 05-16201

AUG 14 2006

LEAVY, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent. Ekeh has not cooperated fully and honestly with immigration officials to secure the necessary travel documents from Liberia or Nigeria and thus has not met his burden to show there is no significant likelihood of removal in the reasonably foreseeable future. See Lema v. INS, 341 F.3d 853, 855 (9th Cir. 2003).

While we review the district court's denial of Ekeh's habeas petition de novo, we review the INS's factual findings for substantial evidence, "reversing only if the evidence is so compelling that no reasonable factfinder could fail to find the facts were as the alien alleged." Id. Substantial evidence supports the U.S. Immigration and Customs Enforcement's (ICE) finding that Ekeh was not "cooperating with ICE's efforts to remove [him]," because he mislead ICE concerning his true identity and because he had not provided the Nigerian consul with information sufficient to establish his father's citizenship.

The Liberian Embassy officer who interviewed Ekeh indicated that Ekeh "seemed evasive at answering questions, could not remember dates and locations of schools in Liberia" and doubted that Mr. Ekeh was answering truthfully. The officer also stated that Ekeh had obtained his Liberian passport illegally.

While Ekeh asserts that he has been unable to obtain sufficient information on his father to establish Nigerian citizenship, Ekeh has given inconsistent information concerning his family. At one point, he stated he had a brother in Irvington, New Jersey, with whom he had occasional contact and an additional sister and brother in Liberia. At another point, Ekeh said he had two sisters and three brothers who he believes are all in Liberia. Ekeh told a probation officer that his father was a Liberian civil servant and his mother sold groceries from a kiosk. Yet in his asylum application, Ekeh said his father was a school principal and his mother was a nurse. Moreover, while detained, Ekeh made numerous unexplained phone calls to Nigeria, including to a number where the person answering the phone identified himself as Ekeh's "brother."

Additional evidence in the record supports the ICE's determination that Ekeh is not truthful, including: (1) a 1996 conviction for Grand Theft involving a forged check; (2) a 1999 attempt to enter the United States by making a documented false claim of U.S. citizenship by presenting a birth certificate and Arizona driver's license in the name of Marty Jay Jones; (3) a 2002 conviction of making false statements on a passport application; and (4) involvement in a scheme involving 500 counterfeit credit cards, fraudulent checks, and counterfeit United States currency.

I would deny the petition.